In the High Court of Judicature at Madras

Dated: 26/03/2002

Coram

The Honourable Mr.Justice R.Jayasimha Babu
and
The Honourable Mr.Justice A.Kulasekaran

Original Side Appeal No.309 of 1996

K.Sadagopan ..... Appellant

-Vs-

K.Yamunan,
NO.62, T.P. Koil Street,
Triplicane, Madras 5. ..... Respondent

Appeal filed under Order XXXVI Rule 1 of the Original Side Rules and Clause 15 of the Letters Patent against the judgment and decree made in T.O.S. No.25 of 1991 dated 09.09.1996.

!For Appellant : Mr.M.Vijayakumar

^For Respondent : Mr.N.S.Varadachari

:JUDGMENT

(Judgment of the Court was delivered by R.Jayasimha Babu, J).

The will executed by late Sri R.Kesava Iyengar who was the doyen of the Bar of this Court and had practised in this Court for a period of nearly seventy years from 1917 to 1987 and who died at the age of 98 on 9th November 1990 after executing a will on 05.06.1968 (Ex.P.2) bequeathing his house in Triplicane to his youngest son K.Yamunan, advocate, became the subject matter of T.O.S. No.25 of 1991 in which the letters of administration with a copy of the will annexed thereto sought by the plaintiff Yamunan was opposed by one of his step brothers Sadagopan. The will is a holograph one written in a firm hand by the testator. The will is attested by two witnesses - S.Parthasarathy, the elder son-in-law of the testator, and Narayanan, brother of Parthasarathy.

2. All five daughters by the third wife, as also two of the three sons by the second wife of the testator filed affidavits consenting to the grant of letters of administration in favour of Yamunan the only son by the third wife. The sole objector was Sadagopan, the third son of the testator by his second wife. The testator had been married thrice, the second marriage being after the demise of the first wife, who had died issueless, the third marriage having taken place after the demise of the second wife. Through the

second wife the testator had three sons.
3. At the time of execution of the will the execution as also the will having been written by the testator himself not being disputed even by the caveator Sadagopan the persons residing with the testator were his third wife and their children, the three sons by the second wife by then having left the home of the testator, the last to leave being Sadagopen in the year 1960. All the sons by the second wife had left their father's home after their marriage.
4. The testator lived for twenty two years after he executed the will and had not felt the need to make any change therein. The testator's third wife predeceased him, she having passed away in 1978. It was stated by the plaintiff Yamunan in his evidence that the will was given to him by his father some time in the year 1980 after the testator's youngest daughter was married and that the will remained in the almirah in the house thereafter. He has also deposed that the testator had shown the will to his second son Sri.Parasaran in 1987. Yamunan has stated in his deposition that he had informed all his brothers and sisters shortly after the demise of his father, when the monthly ceremonies were being observed, about the execution of the will and had also offered to show them the xerox copies of the will.

5. The caveator Sadagopan had, in his written statement filed in the suit, contended that the plaintiff was scheming to take all the properties of the testator; that the will was the direct result of such scheming; that the plaintiff had, by coercive methods, made the testator to yield to his pressures and had generated a fear in the mind of the testator by his rude and rough and tough behaviour and created an atmosphere so deceitful and clandestine that the plaintiff alone could be the only ray of hope and help for the testator in his future life, and brought about pressure and signaled that the plaintiff could be the only hope for the testator to fall back upon. The fact that the testator had executed the will and that it was a document in the hand writing of the testator was not disputed. It was claimed by Sadagopan that he had typed numerous documents for his father during the years he stayed with him, i.e., till the year 1960; that his father was always in the habit of dictating and having the documents typed; that the will produced by the plaintiff could not have been written by him of his own free will and though the document has been executed physically, it was not executed by him mentally.
6. In support of the allegations of coercion, the burden of proving which was entirely upon the defendant, the only evidence produced was his own deposition in which he stated that his father was not writing drafts and, therefore, the will could not have been executed voluntarily; that "it could have been executed by coercion and pressure". He accepted that the draft of the will Ex.P.3 was in the handwriting of his father. He stated that he did not know personally about the will. He also stated that he had no occasion to see the will; that he had only seen a certified copy after he filed the caveat, and had made no attempt to see the original. He stated that according to him, the will should be in a particular form providing for management of the properties and performance of festivals, and since those aspects are not referred to in the will, the will could not have been executed voluntarily. He also stated that the testator's own functions would have prevented him from writing the will which admittedly was written by him. He

stated that all the three sons born to him by his second wife, were well educated and married; that only after all of them got married they left their father's home by themselves; and that after the children of the second wife left the house, the testator was " looked after by the plaintiff, his mother and sisters".

7. The defendant Sadagopan, in his deposition, described his father as 'a strong man', as 'very orthodox', and as 'very fair man', that as on the date of execution of the will he was 'hale and healthy', and that all his children were 'well treated' by him. He stated that his father was born in 1892, and that on the date of the alleged will he was 76 years and was in the 45th year of practice in this court. He then speculated that such a man would not have written a will in the manner written. The witness stated - "it was written physically only and not mentally or voluntarily. The main cause of the will was coercion and pressure by the mother of the plaintiff" and that though a draft of the will is said to have been written, it cannot be accepted as true. He then set out the reasons for his opinion that the will could not be genuine. He deposed that in the will the testator's father's name Rajam Iyengar is not set out; that there is no codicil in the alleged will; that the codicil is a must; that there is no mention about the last rites; that there is no mention about the provision for the marriage of three of the daughters, who were unmarried at that time, and about the maintenance of his third wife, as also about the festival Dhavana Utsavam of Parthasarathy Koil in which the testator was much interested, the testator's family deity being Lakshmi Narasimhan. He stated that for every will there should be a cause and no reason was mentioned in the will for making the bequests. The will, according to him, could not be the expression of the real intention of the testator as the will did not provide anything for the daughters, three of whom were unmarried at the time of execution of the will, and for his wife who was solely dependent upon him. He also doubted the will by reason of the fact that the day of the execution, according to him, was inauspicious. He deposed that the testator who believed in astrology would not have chosen such a day to execute the will. The witness thought that a genuine will should be attested by doctors and advocates and not by relatives as has been done in this case.

8. No member of the family other than the defendant Sadagopan had any doubt about the genuineness of the will, and each one of them had filed affidavits consenting to the grant of letters of administration in favour of the plaintiff. The attestor Parthasarathy had filed his affidavit, but could not be examined as he passed away before the trial commenced. However, the other attestor Narayan was examined as P.W.2.

9. The plaintiff deposed about the fact that his father had told him that he had executed the will under which the property at old No.56 , New No.62, Tholasinga Perumal Koil Street, Triplicane, Madras 2, was being given to plaintiff, and that his father had also entrusted the original will to plaintiff's custody in the year 1980, after the marriage of the youngest daughter, after which it was lying in the almirah in the house. One of the attestors to the will, Narayanan who deposed as P.W.2, spoke to his attestation, the signature of the testator, and that of the other attestor who was his brother. He stated that the testator signed the will in the presence of the attestors, that the testator had asked him to sign the will which he

signed and then his brother signed. He stated that he read the will before signing; that the will was placed before the attestors by the testator, and that the attestors attested the document in the presence of the testator. He also stated that the testator had sent a messenger asking him to go over to his house; that the testator was his well wisher; that the testator had told him not to inform his youngest son Yamunan about the execution of the will and that he had only informed his sister-in-law. Nothing worth mentioning has been brought out in his cross examination.

10. The execution of the will by the testator at a time when he was in good health and was in a sound state of mind, has been sufficiently well established, by the evidence adduced at the trial.

11. None of the circumstances pointed out by the defendant can be regarded as sufficient to invalidate this duly executed will.

12. The fact that the testator did not choose to mention the name of his father in the will can hardly be a ground to invalidate the will. The testator was, at the time of writing the will, 76 years old and had put in over 45 years of practice; had been a leading lawyer for many years and it was entirely a matter of his choice as to how he chose to identify himself. His statement in the will that the will is executed by him, and his signature thereon were sufficient for anyone to know the identity of the executant.

13. The fact that the testator did not choose to refer to all the members of his family also is not a factor which can be regarded as suspicious and render the document unreliable. It is entirely a matter of volition of the testator as to whether he should refer to all the members of his family in his will. He had sufficiently identified the legatee in whose favour the bequest was being made and had identified the property that was being bequeathed.

14. It is no doubt a little odd that no mention is made of his unmarried daughters and of his wife in this document as one would normally expect some provision to be made for their benefit. The explanation for that appears to be that there was a house which the testator had bought in the name of his third wife at Mandavellipakkam. The testator apparently thought that, that was a sufficient provision for his wife and daughters. Moreover, none of the daughters raised any objection to the grant of the letters of administration on the ground that they had been excluded in the will. If at all any body could have a grievance it could only be the daughters and not the defendant.

15. The defendant does not question the fact that the will is in the hand writing of the testator himself. The fact that the testator chose to write the will in his own hand and chose not to dictate and not to sign a typed will is not a ground for suspicion, having regard to the evidence given by Narayanan, P.W.3 one of the attestors, who has deposed that the testator did not want the execution of the will to be made known even to the legatee, his own youngest son. The only way of preserving the confidentiality was for him to write the will in his own hand and disclose it only to the attestors, and thereafter retain the document in his custody which apparently he did till he informed his son about the execution of the will in the year 1980. By the year 1980 all his daughters had been married, his third wife also was no more, and the property at Mandavelipakkam had also been sold, and even according to the defendant the proceeds of the sale were shared by the daughters and the youngest son.

16. The fact that there is no codicil is wholly irrelevant. It is evident that though the defendant claims to have worked with his father and typed over a thousand documents for him, he had not known the distinction between a will and a codicil. The absence of a codicil has no impact whatsoever on the genuineness of the will which had been duly executed.

17. So far as alleged coercion is concerned, the defendant sought to make an improvement in his deposition, over what he had pleaded. The pleading was that coercion was exerted by the legatee. The evidence was that it was exerted by the legatee and his mother. These were merely in the nature of assertions and there was no evidence direct or circumstantial to support it. The legatee Yamunan was about 28 years of age when the will was executed. He was an advocate practising with his father who was at that time 76 and who had put in over 45 years of practice, and was a strong man besides being a senior advocate of high standing. The theory put forth that such a person could have been coerced by his youngest son who was a novice at law is hard to believe. There was no evidence regarding the alleged power which the youngest son could have exerted over his father to coerce the father into making a bequest of the house to him. Even the plea in the written statement is contradictory. While alleging coercion and while imputing rude and rough conduct to the plaintiff, it was stated by the defendant that the plaintiff had made the testator to believe that the plaintiff was the only ray of hope. If the plea of rude and rough conduct is true, such conduct certainly would not have been tolerated by a person like the testator, who would certainly not regard a person exhibiting such conduct as a ray of hope.

18. In the matter of writing wills, the language employed in making known one's intention, the brevity or the proloxity in making that intention known, the things to which reference is made or omitted, are all matters entirely for the testator to decide. The law does not prescribe a standard format which every testator should comply with when he or she writes a will. All that the law requires is that the will be executed by the testator when he is in a fit and disposing state of mind; that the will record his intention and that such a will be attested. The requirements of law were fully met when the testator executed the will and had the same attested.

19. The brevity of the will is wholly understandable. The executant was a senior counsel of high standing who had practised law for over 45 years, and who had no difficulty whatsoever in making his intention known in a language which was simple and direct. The will first sets out that it is a will. Thereafter the date of the execution of the will and the name of the executant followed by his address are set out. The language employed in the will continues to be direct. In the paragraph that follows the opening paragraph, the testator directly deals with the subject matter of the will by referring to the property at Tolasinga Perumal Koil Street, Triplicane. He has stated the manner in which he had come to be the owner of that property which was by way of purchase in the year 1954. He has referred to the document under which he acquired such ownership, has given the number of the document as also the registration details; he has asserted the fact that he was the absolute owner and that he had been in enjoyment thereof. He has then set out his desire to bequeath the property in favour of the youngest son whom he has identified and named, and whose profession as an advocate he has also set out. He has thereafter recorded the bequest of the property already described in favour of the legatee already named.

20. Besides the house, the testator also bequeathed to his youngest son his law library. He has lent further assurance to the reader of the will that it was in fact executed by him by stating that "I have executed this will while in full possession my senses and out of my own free will and written in my own hand". No further assurance of the voluntary character of the will was required than the one given by the testator himself. The hand writing is firm and even as admitted by the defendant, the testator was a strong man.
21. So far as the choice of attestors is concerned, the first witness was his own son-in-law and the only son-in-law at the time of the execution of the will. The fact that the testator had three sons from his second wife and that he chose not to disclose the execution of the will to them, is not surprising as they were not to be legatees and the embarrassment and disappointment of knowing that the father was not bequeathing anything to them was best avoided. The other attestor was the brother of the son-in-law. That choice again is not a matter of surprise as that person while not being a member of the family was not a total stranger either.
22. It is well settled that once it is shown that the will was executed by the testator when he was in sound and disposing state of mind, the burden of proving allegations that it is vitiated by coercion, fraud or the like factors, is entirely on the defendant. In this case, the evidence adduced by the defendant is nothing more than his own ipsi dixit, the allegations made in the written statement alleging coercion also being very vague.
23. The allegations of coercion cannot, by any stretch of imagination, be said to have been established.
24. It is unfortunate that the will of the testator who had practised in this Court for seventy years and was the doyen of the Bar for many years before his demise should have been made the subject matter of such litigation. We find no merit in this appeal.
25. The appeal is dismissed.

Index : Yes
Website: Yes

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